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**Advisory Opinion 21AO:0004**

**DATE:** October 21, 2021

**SUBJECT:** Request for Job Applicant Records

**RULING:**

Matthew S. Brick  
Brick Gentry P.C.  
6701 Westown Parkway, Suite 1000  
West Des Moines, Iowa 50266

Sent via email to [matt.brick@brickgentrylaw.com](mailto:matt.brick@brickgentrylaw.com)

Mr. Brick,

We are writing in response to your request dated August 9, 2021, requesting an advisory opinion from the Iowa Public Information Board (IPIB) pursuant to Iowa Code chapter 23 and Iowa Administrative Code rule 497-1.3.

We note at the outset that the IPIB's jurisdiction is limited to the application of Iowa Code chapters 21, 22, and 23, as well as rules in Iowa Administrative Code chapter 497. Advice in an IPIB opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

**BACKGROUND:**

At issue is a request received by the City of Waukee (City) seeking, in relevant part, the applications, resumes, and cover letters of all candidates interviewed for the City's recently posted Economic Development Coordinator position.

The City requests guidance on what can be released in response to the request, as well as what information should be redacted prior to responding. The facts presented are comparable to the issues raised in *Mirela Kuhn v. City of Sioux City*, 21FC:0049 (IPIB). However, there are distinguishing facts as well as ambiguities that the City is requesting clarification on.

**Board Members**

Joan Corbin • E. J. Giovannetti • Barry Lindahl • Keith Luchtel • Monica McHugh  
Frederick Morain • Julie Pottorff • Suzan Stewart • Stan Thompson

## QUESTIONS POSED:

- I. Pursuant to Iowa Code section 22.7(18)(a), does the law presume employee applicants consent to treat employment applications, resumes, and cover letters as exempt from disclosure? If not, how should the City request consent from a person outside of the government to determine if they want to treat their employment application, resume, and/or cover letter as a public record?
- II. Pursuant to Iowa Code section 22.7(18)(b), does the law presume the entire content of employment applications, resumes, and cover letters are exempt? If not, what types of information is the City required to release that would be contained in employment applications, resumes, and/or cover letters?
- III. In cities without a civil service commission, is the City required to create a document similar to a civil service list of candidates?

## OPINION:

### I.

*Pursuant to Iowa Code section 22.7(18)(a), does the law presume employee applicants consent to treat employment applications, resumes, and cover letters as exempt from disclosure? If not, how should the City request consent from a person outside of the government to determine if they want to treat their employment application, resume, and/or cover letter as a public record?*

Iowa Code section 22.7(18)(a) states:

*The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:*

*Communications not required by law, rule, procedure, or contract that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination. As used in this subsection, "persons outside of government" does not include persons or employees of persons who are communicating with respect to a consulting or contractual relationship with a government body or who are communicating with a government body with whom an arrangement for compensation exists.*

*Notwithstanding this provision:*

*The communication is a public record to the extent that the person outside of government making that communication consents to its treatment as a public record.*

The law makes no presumption about whether applicants in this situation would consent to having their application materials treated as public records. As stated above, the decision as to whether Iowa Code section 22.7(18) applies to records is one for the government body to make using the standard of reasonable belief.

Furthermore, there is no prescribed method for how a government body must obtain consent from the person outside of government in order to treat their communications as public records as allowed by Iowa Code section 22.7(18)(a). However, it may be in the best interests of the government body to obtain such consent in written form after providing the person outside of government a thorough description of what they would be consenting to.

## II.

*Pursuant to Iowa Code section 22.7(18)(b), does the law presume the entire content of employment applications, resumes, and cover letters are exempt? If not, what types of information is the City required to release that would be contained in employment applications, resumes, and/or cover letters?*

Notwithstanding the aforementioned Iowa Code section 22.7(18), subsection (b) states:

*Information contained in the communication is a public record to the extent that it can be disclosed without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person.*

Iowa Code section 22.7(18)(b) does not make any presumptions as to whether the contents of employment applications are exempt in their entirety. As stated in Iowa Code section 22.7(18)(b), any information that “can be disclosed without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person” shall be treated as a public record. Without reviewing the records, the IPIB is unable to determine precisely which information is able to be released.

## III.

*In cities without a civil service commission, is the City required to create a document similar to a civil service list of candidates?*

Iowa Code chapter 22 does not require that a record be created to respond to a record request.

**BY DIRECTION AND VOTE OF THE BOARD:**

Joan Corbin  
E.J. Giovannetti  
Barry Lindahl  
Keith Luchtel  
Monica McHugh  
Rick Morain  
Julie Pottorff  
Suzan Stewart  
Stan Thompson

**SUBMITTED BY:**

Zachary S. Goodrich  
Legal Counsel

**ISSUED ON:**

October 21, 2021

*Pursuant to Iowa Administrative Rule 497-1.3(3), a person who has received a board opinion may, within 30 days after the issuance of the opinion, request modification or reconsideration of the opinion. A request for modification or reconsideration shall be deemed denied unless the board acts upon the request within 60 days of receipt of the request. The IPIB may take up modification or reconsideration of an advisory opinion on its own motion within 30 days after the issuance of an opinion.*

*Pursuant to Iowa Administrative Rule 497-1.3(5), a person who has received a board opinion or advice may petition for a declaratory order pursuant to Iowa Code section 17A.9. The IPIB may refuse to issue a declaratory order to a person who has previously received a board opinion on the same question, unless the requestor demonstrates a significant change in circumstances from those in the board opinion.*